

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FRANCIS (FRANK) GARNER,
PH.D,

Plaintiff,

v.

PACIFIC NORTHWEST
NATIONAL LABORATORY
(AKA BATTELLE MEMORIAL
INSTITUTE, an Ohio Nonprofit
Corporation) and CHARLES
HENAGER,

Defendants.

NO. CV-09-5056-RHW

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND WITH
LEAVE TO RENEW**

Before the Court is Plaintiff's Motion to Remand (Ct. Rec. 3). The motion was heard without oral argument.

On June 12, 2009, Plaintiff filed his complaint in Benton County Superior Court. Plaintiff is bringing state law claims for conversion and wrongful termination. In his complaint, he also alleged that Defendant Pacific Northwest National Laboratory (PNNL) terminated his family health care insurance plan without any notification, even though the plan was purchased for Plaintiff as a retiree, not a current employee. The premium was deducted from his pension and not funded by Defendant directly. Plaintiff alleged that he was incurred economic damage prior to the reinstatement after complaining about the wrongful termination of the insurance. Plaintiff also alleges that Defendant was deliberately and continuously unresponsive to inquiries by Plaintiff concerning his pension status.

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1 Based on these allegations, Defendant Battelle Memorial Institute removed
2 the action to the Eastern District of Washington. Plaintiff then filed a Motion to
3 Remand to State Court. In his briefing, Plaintiff indicates that he is willing to file
4 an amended complaint that deletes the allegations regarding the termination of the
5 health care plan and complaints about the pension inquiries. Plaintiff filed a
6 proposed amended complaint, but did not file a motion seeking leave of the Court
7 to file the amended complaint. Rather, Plaintiff indicates that he intends to file the
8 amended complaint in Superior Court, presumably after the Court remands the case
9 back to state court.

10 When determining the existence of removal jurisdiction, the court must look
11 to the complaint as of the time the removal petition was filed. *Abada v. Charles*
12 *Schwab & Co., Inc.*, 300 F.3d 1112, 1117 (9th Cir. 2002). In this case, based on the
13 allegations concerning the health care benefits and pension plan, there is federal
14 subject matter jurisdiction and removal was proper.

15 Nevertheless, Plaintiff can amend his complaint to eliminate the federal
16 claims. *See Baddie v. Berkeley Farms, Inc.*, 64 F.3d 487, 490-91 (9th Cir. 1995). If
17 and when Plaintiff files his amended complaint, the Court can make the
18 determination as to whether it will exercise its supplemental jurisdiction to hear the
19 remaining state claim. *See Gilmore v. Bank of New York*, 2009 WL 2031736 (S.D.
20 Cal. July 9, 2009).

21 Accordingly, **IT IS HEREBY ORDERED:**

22 1. Plaintiff's Motion to Remand (Ct. Rec. 3) is **DENIED**, with leave to
23 renew.

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s/Robert H. Whaley
ROBERT H. WHALEY
United States District Judge

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